

in paragraph (c)(5) of this section, the Director will resolve the disagreement and amend the approved study plan as appropriate.

(7) If no participant or the Commission staff files a disagreement concerning the potential applicant's meeting summary and request to amend the approved study plan within 30 days, any proposed amendment shall be deemed to be approved.

(d) *Criteria for modification of approved study.* Any proposal to modify an ongoing study pursuant to paragraphs (c)(1)–(4) of this section must be accompanied by a showing of good cause why the proposal should be approved, and must include, as appropriate to the facts of the case, a demonstration that:

(1) Approved studies were not conducted as provided for in the approved study plan; or

(2) The study was conducted under anomalous environmental conditions or that environmental conditions have changed in a material way.

(e) *Criteria for new study.* Any proposal for new information gathering or studies pursuant to paragraphs (c)(1)–(4) of this section must be accompanied by a showing of good cause why the proposal should be approved, and must include, as appropriate to the facts of the case, a statement explaining:

(1) Any material changes in the law or regulations applicable to the information request;

(2) Why the goals and objectives of any approved study could not be met with the approved study methodology;

(3) Why the request was not made earlier;

(4) Significant changes in the project proposal or that significant new information material to the study objectives has become available; and

(5) Why the new study request satisfies the study criteria in § 5.9(b).

(f) *Updated study report.* Pursuant to the Commission-approved study plan and schedule provided for in § 5.13, or no later than two years after Commission approval of the study plan and schedule, whichever comes first, the potential applicant shall prepare and file with the Commission an updated study report describing its overall progress in implementing the study plan and schedule and the data col-

lected, including an explanation of any variance from the study plan and schedule. The report must also include any modifications to ongoing studies or new studies proposed by the potential applicant. The review, comment, and disagreement resolution provisions of paragraphs (c)(2)–(7) of this section shall apply to the updated study report. Any proposal to modify an ongoing study must be accompanied by a showing of good cause why the proposal should be approved as set forth in paragraph (d) of this section. Any proposal for new information gathering or studies is subject to paragraph (e) of this section except that the proponent must demonstrate extraordinary circumstances warranting approval. The applicant must promptly proceed to complete any remaining undisputed information-gathering or studies under its proposed amendments to the study plan, if any, and must proceed to complete any information-gathering or studies that are the subject of a disagreement upon the Director's resolution of the disagreement.

[Order 2002, 68 FR 51121, Aug. 25, 2003; 68 FR 61742, Oct. 30, 2003]

§ 5.16 Preliminary licensing proposal.

(a) No later than 150 days prior to the deadline for filing a new or subsequent license application, if applicable, the potential applicant must file for comment a preliminary licensing proposal.

(b) The preliminary licensing proposal must:

(1) Clearly describe, as applicable, the existing and proposed project facilities, including project lands and waters;

(2) Clearly describe, as applicable, the existing and proposed project operation and maintenance plan, to include measures for protection, mitigation, and enhancement measures with respect to each resource affected by the project proposal; and

(3) Include the potential applicant's draft environmental analysis by resource area of the continuing and incremental impacts, if any, of its preliminary licensing proposal, including the results of its studies conducted under the approved study plan.

(c) A potential applicant may elect to file a draft license application which

includes the contents of a license application required by §5.18 instead of the Preliminary Licensing Proposal. A potential applicant that elects to file a draft license application must include notice of its intent to do so in the updated study report required by §5.15(f).

(d) A potential applicant that has been designated as the Commission's non-Federal representative may include a draft Biological Assessment, draft Essential Fish Habitat Assessment, and draft Historic Properties Management Plan with its Preliminary Licensing Proposal or draft license application.

(e) Within 90 days of the date the potential applicant files the Preliminary Licensing Proposal or draft license application, participants and the Commission staff may file comments on the Preliminary Licensing Proposal or draft application, which may include recommendations on whether the Commission should prepare an Environmental Assessment (with or without a draft Environmental Assessment) or an Environmental Impact Statement. Any participant whose comments request new information, studies, or other amendments to the approved study plan must include a demonstration of extraordinary circumstances, pursuant to the requirements of §5.15(f).

(f) A waiver of the requirement to file the Preliminary Licensing Proposal or draft license application may be requested, based on a consensus of the participants in favor of such waiver.

§5.17 Filing of application.

(a) *Deadline—new or subsequent license application.* An application for a new or subsequent license must be filed no later than 24 months before the existing license expires.

(b) *Subsequent licenses.* An applicant for a subsequent license must file its application under part I of the Federal Power Act. The provisions of section 7(a) of the Federal Power Act do not apply to licensing proceedings involving a subsequent license.

(c) *Rejection or dismissal of application.* If the Commission rejects or dismisses an application for a new or subsequent license filed under this part pursuant to the provisions of §5.20, the application may not be refiled after the new or

subsequent license application filing deadline specified in paragraph (a) of this section.

(d)(1) *Filing and service.* Each applicant for a license under this part must submit the application to the Commission's Secretary for filing pursuant to the requirements of subpart T of part 385 of this chapter. The applicant must serve one copy of the application on the Director of the Commission's Regional Office for the appropriate region and on each resource agency, Indian tribe, or member of the public consulted pursuant to this part.

(2) An applicant must publish notice twice of the filing of its application, no later than 14 days after the filing date in a daily or weekly newspaper of general circulation in each county in which the project is located. The notice must disclose the filing date of the application and briefly summarize it, including the applicant's name and address, the type of facility applied for, its proposed location, and the places where the information specified in §5.2(b) is available for inspection and reproduction. The applicant must promptly provide the Commission with proof of the publication of this notice.

(e) *PURPA benefits.* (1) Every application for a license for a project with a capacity of 80 megawatts or less must include in its application copies of the statements made under §4.38(b)(1)(vi).

(2) If an applicant reverses a statement of intent not to seek PURPA benefits:

(i) Prior to the Commission issuing a license, the reversal of intent will be treated as an amendment of the application under §4.35 of this chapter and the applicant must:

(A) Repeat the pre-filing consultation process under this part; and

(B) Satisfy all the requirements in §292.208 of this chapter; or

(ii) After the Commission issues a license for the project, the applicant is prohibited from obtaining PURPA benefits.

(f) *Limitations on submitting applications.* The provisions of §§4.33(b), (c), and (e) of this chapter apply to license applications filed under this Section.

(g) *Applicant notice.* An applicant for a subsequent license that proposes to